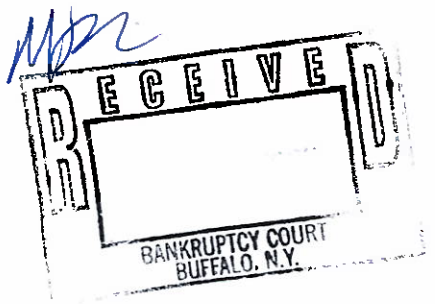


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



In Re

96-CV-0675E(F)
BK AP 91-1151K

JAMES MICHALEK,

Debtor.

JAMES MICHALEK,

Appellant,

ORDER

-VS-

JOHN RING, III,

Appellee.

Presently under consideration is the timely motion brought by John H. Ring, III, Trustee, to amend this Court's Order entered October 25, 1996 dismissing the encaptioned appeal. Rules 59 and 60(a) of the Federal Rules of Civil Procedure and Rule 4(a)(4) of the Federal Rules of Appellate Procedure. The motion will be granted.

This Court based the dismissal on a certification from the Bankruptcy Court Clerk's office which was inadvertently misinterpreted as indicating that

the appellant had failed to file a designation of items to be included in the record and a statement of the issues to be presented on appeal as required by Rule 8006 of the Bankruptcy Rules. Rule 76.2 of the Local Rules of Civil Procedure for the United States District Court for the Western District of New York. In fact, the certification, while not a model of clarity, indicates that the appellant had failed to pay the required \$105 filing fee or to seek in forma pauperis standing. This Court's *de novo* review of the record indicates that the appellant was notified repeatedly throughout a period extending more than four months of his need to pay the required fee or seek in forma pauperis standing and was provided the form by which to request such status. See Docket items 54, 56, 59, 61 and letter dated August 9, 1996 from the Clerk of United States Bankruptcy Court for the Western District of New York in Bankruptcy Case No. AP 91-1151 K. The appellant has neither paid the fee nor sought in forma pauperis standing in this action and his prolonged and apparent obstinate failure to do so in the face of repeated notices was and is the proper basis for the dismissal.

The appellant's Cross Notice of Motion seeking a rescission of the dismissal is rendered moot.

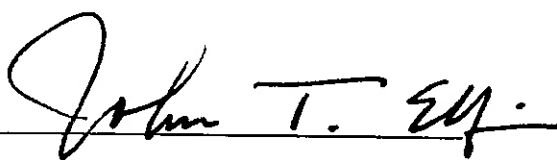
Accordingly, it is hereby **ORDERED** that the appellant's motion is denied, that the appellee's motion is granted and that this Court's Order of dismissal entered October 25, 1996 is hereby **AMENDED** as follows:

The first two paragraphs are deleted and replaced with the following paragraph:

"After due notice, the appellant has failed to remit the required filing fee or seek in forma pauperis standing. Accordingly, it is hereby **ORDERED** that the above entitled appeal is dismissed and that this case shall be closed."

DATED: Buffalo, N.Y.

December **18**, 1996

A handwritten signature in cursive script, reading "John T. Ely", is written over a horizontal line.

U.S.D.J.